



AIA Washington Council

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Issue Brief

Qualifications Based Selection for A/E Services Oppose SB 6235

Background

Federal law (40 USC § 541, The Brooks Act), and state law (RCW 39.80, Contracts for Architectural and Engineering Services) require that architects and engineers be selected based on their qualifications.

Under qualifications-based selection laws (QBS), an agency selects the most qualified firm and negotiates a scope of services, including the best possible fees. If the agency is unsatisfied with the scope of services and fees negotiated, it may end negotiations with that firm and start negotiations with the next most qualified firm. **Through this process, the agency maintains ultimate control over not only the scope of a project, but the fees paid to the A/E firm.** It also is in this negotiation process that the true scope of a project is often determined. Fee-based selection would undermine these valuable negotiations.

In addition to the federal government, 47 of the 50 states hire architects and engineers by QBS. Moreover, the American Bar Assn Model Procurement Code for State & Local Governments and the American Public Works Association endorse QBS for selecting A/E services.

SB 6235 Weakens QBS Laws

SB 6235 attempts to clean up procurement practices by public ports. But, in doing so, it adds architectural and engineering services to the definition of “public work.” **By adding these services to this definition it would apply many laws not appropriate to architecture and engineering procurement, such as: price bidding, prevailing wage, apprenticeship requirements, surety, and retainage.** This sets up an inherent conflict in the law in which contractors are selected based on the lowest bid, while architects are selected based on qualifications. It also adds architecture and engineering services to the small works roster statutes for ports.

The state’s QBS law already applies to all state agencies, local agencies and special districts, including port districts or authorities. Thus the procurement changes in SB 6235 are not needed.

Improving enforcement of the statute would be beneficial. Currently, there are no penalties for agencies that violate the A/E procurement statutes. Adding financial penalties would incentivize agencies to comply with state law.

Also, state law could be clarified to ensure the QBS law is used to procure other services provided by architects and engineers such as construction management, program management, planning, facility planning, environmental consulting, etc.

Americans Support QBS for A/E Services

A nationwide poll conducted by two respected national pollsters - The Tarrance Group, a Republican firm, and Lake Snell and Perry, a Democratic firm - found that **88 percent of voters support the government using qualifications to select architects.** They agreed with the statement, “Because public health and safety is at stake, these contracts should be awarded by selecting the best qualified architects and engineers and then negotiating the best possible fee.” In the poll, every major voter group registered over 80 percent support for the QBS concept.

In fact, only 11 percent of voters said they agreed with the viewpoint that “architects and engineers who are hired by government agencies to design and construct public buildings like schools, hospitals, airports, courthouses and prisons should always be awarded to the lowest bidder in order to save money.”